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Governing protracted displacement

What access to solutions for forcibly displaced people?

Marion Noack, Martin Wagner, Carolien Jacobs

The governance of displacement and access to protection are closely linked to solutions for displaced people that refer to both the capability of displaced persons to rebuild their lives after displacement and the opportunities available to do so. Current policies to address displacement follow the (often artificial) division of governance structures for displacement. Available solutions are usually closely related to the classification of displaced persons into different categories. The qualification of a person as a refugee, an internal displaced person (IDP) or a labour migrant entails what kind of solutions provided by the international community are accessible and whether a person can rely on the support by a dedicated agency, or whether the person is left unsupported. Governance structures, however, often overlap and lead to significant gaps at the same time, leading to protracted displacement characterised by vulnerability, dependency and legal insecurity owing to continuous cycles of displacement and a lack of durable solutions.

Central findings and recommendations

- 1 Multiple actors and multiple frameworks govern displacement globally and at a regional level.** Their mandates partially overlap and the categorisation of displaced persons, closely linked to the institutional mandates and definitions in legal frameworks, result in protection gaps for certain groups concerned. Bridging the gap between humanitarian/emergency relief and protection and development assistance by forming integrated approaches will better account for the needs of displaced populations.
- 2 The governance framework of displacement centres on the objective of providing protection.** Yet, protection in itself provides only part of the solution for individuals. With the endurance of conflicts and the increase in protracted displacement situations, this (short-term) protection need should be coupled with longer-term perspectives to access livelihoods and, as such, solutions.
- 3 Solutions are often lacking or are not tailored to the needs of the individual.** People in protracted displacement will aim to find solutions on their own, making use of different forms of mobility and transnational networks. Current approaches to forced displacement and access to solutions need to be better equipped to support those individual strategies.
- 4 Legal and policy frameworks and humanitarian action in the field of displacement are not yet reflecting protracted displacement sufficiently.** Policy development with regard to protracted displacement situations should be inspired by an in-depth understanding of the respective individual coping strategies and displaced persons' requirements for leaving those situations.
- 5 Individuals make use of various pathways to access protection and find a livelihood for themselves.** The notion of solutions should hence be broadened to encompass the range of options that pave the way for forcibly displaced people to exercise basic rights all human beings should enjoy.

1 Governance of forced displacement at the global level

The international regime governing displacement shows a number of gaps, most notably with regard to displaced people who are not covered by the definition of refugee of the Refugee Convention, for example internally displaced persons. These protection gaps translate into solution gaps for displaced people.

The governance of forced displacement involves multiple actors and multiple political levels of governance that operate at different geographical scales and within different remits: The governance of displacement lacks clarity and coherence. Forced displacement is not treated comprehensively at the global level, but developed over the years in a piecemeal fashion and as a highly fragmented area (see Figure 1 below).

With the adoption of the [Universal Declaration of Human Rights \(UDHR\)](#) on 10 December 1948, the United Nations General Assembly defined basic civil, political, economic, social and cultural rights that all human beings should enjoy. By becoming parties to international treaties, states assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to protect requires states to take positive action to facilitate the enjoyment of basic human rights ([Human Rights Committee, General Comment No 31 \(n13\) para 8](#)).

The duty and responsibility of states to protect, however, fails in situations where individuals are either unwilling or cannot avail themselves under the protection of the country of origin or

habitual residence. These situations can be manifold: The state may be the very source why someone needs to flee, or the state may not be in the position to protect in the sense of international human rights law, for instance, due to war and indiscriminate violence, deprivation of basic needs due to natural disasters, etc. In such cases, different global actors assume responsibility for some groups of displaced people. Yet others cannot lean on advocacy and patronage of one of those international actors.

The most elaborate framework that exists in the field of forced displacement relates to those people who are subject to individual persecution and crossed a national border. The [1951 Refugee Convention](#) and its [1967 protocol](#) provide the normative framework for asylum at the global level, having been ratified by 142 states. The [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment \(CAT\)](#), ratified by 168 state parties, along with other international instruments, complements the Refugee Convention. It laid the foundation for the notion of non-refoulement, which means that no state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture. The CAT is broadly recognised as customary international law.

The Refugee Convention, or rather its interpretation and practical application, struggles to address many contemporary situations of displacement which are often recurring over protracted periods of time. It is based on a territorial understanding of protection, that is a person needs to reach a safe host state to apply for international protection there. A consequence of this is that people's chances of reaching a safe country depend on their

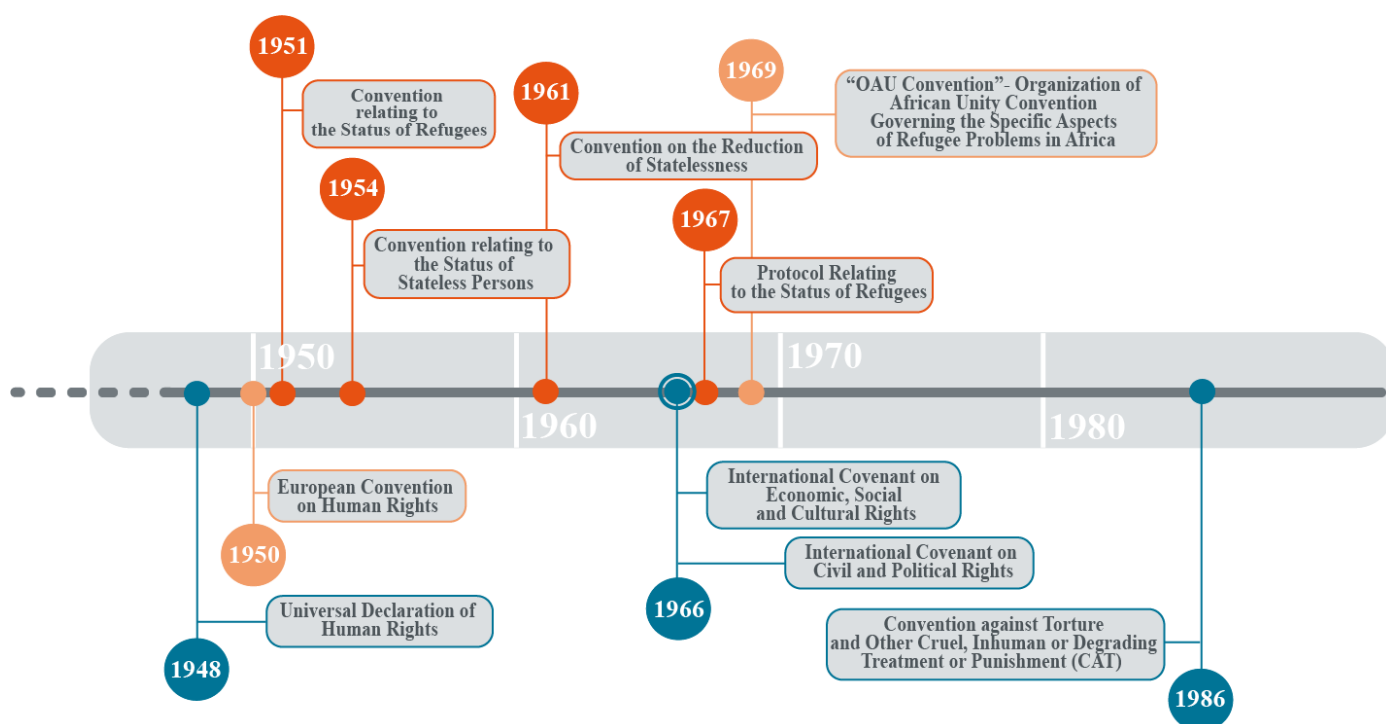


Figure 1: Milestones of the governance of displacement

economic conditions, their networks and support while those without such means are limited to the region close to the country from which they fled, or, in the worst case, are not able to flee at all and remain confined (Vollmer, 2019). Fifty years after the adoption of the Refugee Convention, internally displaced people (IDPs), for a long time under the radar of international attention, became subject of the—legally guiding, but not binding—[UN Guiding Principles on Internal Displacement](#) in 2001.

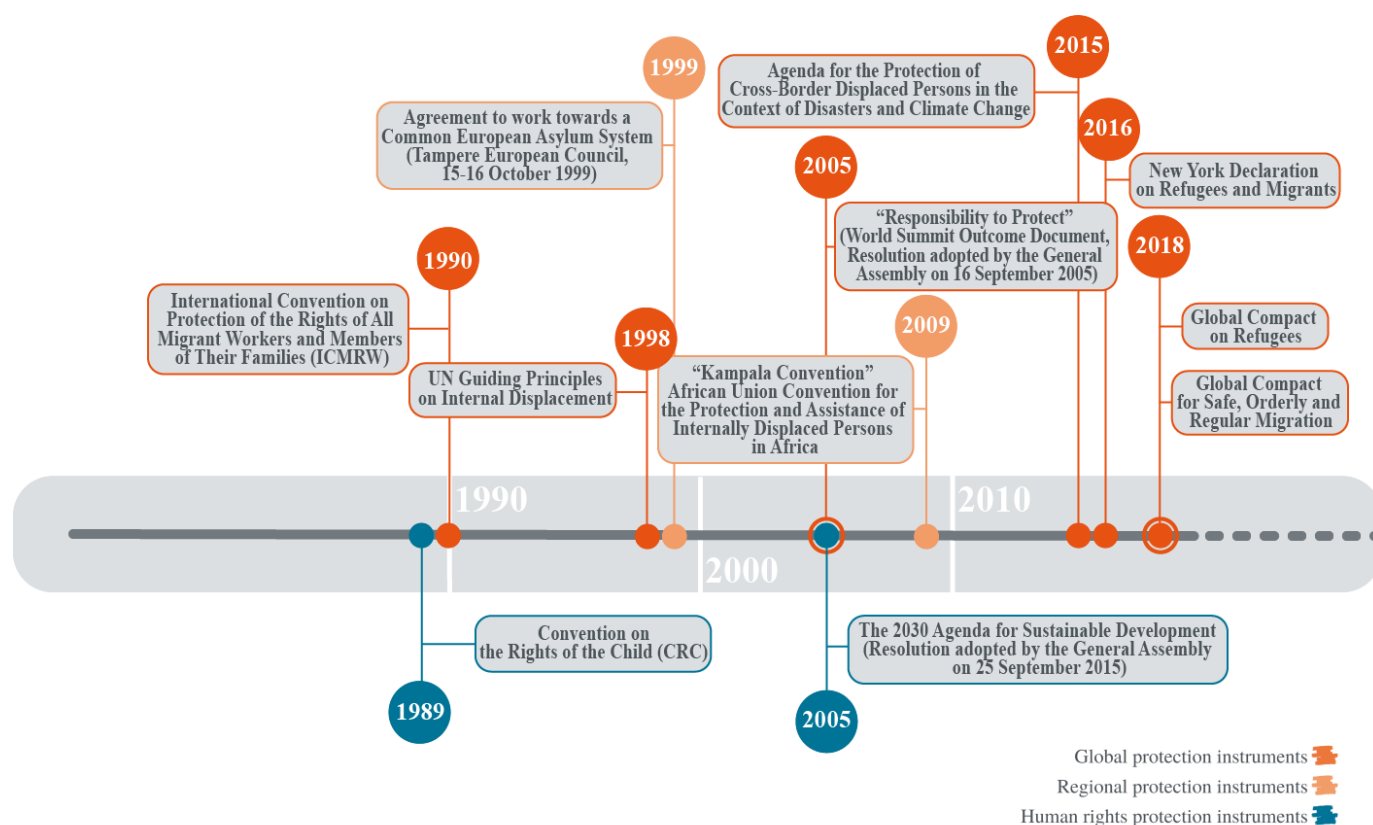
Responding to some of these challenges, the [New York Declaration on Refugees and Migrants](#) adopted in September 2016 established the separate processes to create the [Global Compact on Refugees](#) (the Refugee Compact, affirmed by the United Nations General Assembly on 7 December 2018) and the [Global Compact for Safe, Orderly and Regular Migration](#) (the Migration Compact; adopted by the General Assembly on 19 December 2018). The New York Declaration calls for global approaches and global solutions to large movements and reiterates commitments to the human rights of refugees and migrants “regardless of status” on the basis of over 30 references to human rights (Guild, 2019). The resulting Global Refugee Compact directly targets the challenge of protracted displacement and identifies the facilitation of access to durable solutions as one of its primary objectives. The Refugee Compact calls for innovation and action to ease pressure on host communities, to improve refugee self-reliance, to increase access to third-country solutions and to create the necessary conditions for voluntary return in safety and dignity in the countries of origin.

2. Governance of forced displacement at the regional level

The TRAFIG project specifically focusses on East Africa and the Horn of Africa (Ethiopia, the Democratic Republic of the Congo (DRC), Tanzania), the Middle East and South Asia (Jordan, Pakistan) as well as Europe (Greece, Italy, Germany). Our analysis of existing governance frameworks (Ferreira et al., forthcoming) shows that regional approaches and their implementation vary across the countries in the regions; most seem to be still nascent or remain a compilation of country-level programmes.

In the Middle East, refugee issues are in practice addressed by national legislation and Memoranda of Understanding with UNHCR. In addition, the Arab League has developed several regional instruments of relevance to refugees and protracted displacement. Within the South Asian region, regional regimes impacting on protracted displacement primarily focus on Afghan refugees and emphasise return or repatriation. Tripartite agreements have been an important instrument and the legal basis for UNHCR’s repatriation programme since the 2000s, complemented by a regional policy framework entitled Solutions Strategy for Afghan Refugees (SSAR) since 2012.

In East Africa and the Horn of Africa, progress has been made to protect internally displaced persons (IDPs) better, a large part being in situations of protracted displacement—as shown below with the 2009 [African Union Kampala Convention](#) and the [OAU Convention on the Specific Aspects of Refugee Problems in Africa](#) as the most prominent examples.



In Europe, the [Common European Asylum System \(CEAS\)](#) has developed since 1999: While the term “protracted displacement” is not used in the CEAS, much of its development is closely linked to it as it aimed to reduce “situations of limbo”. However, a number of people still fall outside this protection framework. Specific EU policies and programmes explicitly related to protracted displacement such as the [EC 2016 communication ‘lives in dignity’](#) have largely been developed from the perspective of development and humanitarian aid, both within and outside the so-called “external dimension” of the European Union’s migration and asylum policy, thus regarding protracted displacement as a phenomenon that exists outside the European Union (EU).

3. Interconnected pathways to protection and access to solutions in practice

What solutions can Serge access within the DRC?

Serge is 37 years old and originally comes from a village in the east of the Democratic Republic of the Congo (DRC). He was robbed numerous times by different rebel groups and bandits. From 2008 until 2017, he and his extended family had been on the move, from one village to the next due to the barbaric acts. In 2017, he returned to his home area but decided to stay in the wider region in a place called Bulambika and not to go back to farming as the risks were too high. His wife was then engaged in some commercial activities that were negatively affected by insecurity, corruption and local politics. After becoming again a victim of rebel group attacks, Serge and his wife moved to Bukavu—the capital of DRC’s South Kivu province located along the Congolese–Rwandese border. Due to internal displacement and other forms of migration, the city has grown exponentially in recent decades to an estimated population of one million. Many of the humanitarian aid organisations have their main offices in Bukavu, but interventions are usually not taking place in the city but only in the surrounding territories. Serge’s uncle helped them to identify a neighbourhood where they could live because they wanted to stay connected “with their own people”. Serge is currently trading in palm oil at Bukavu’s central market. In Bulambika, where he and his wife lived previously, they had received assistance from some local development associations and international aid organisations provided to the community. However, to receive aid from international organisations, one often needs good connections with the village leaders. Serge and his family only once received aid from Caritas. Since they moved to Bukavu, they have not received any aid, neither from the state nor from any other organisation.

Serge’s story is based on an interview that was carried out in Bukavu on 3 October 2019 within the TRAFIG research in DRC.

In the global displacement governance regime, Serge could be identified as an IDP, living in a situation of recurrent and protracted displacement. To access safety and livelihoods, he mainly relies on his own strategies by making use of mobility and social connections, outside of any formal frameworks for protection and only with very limited aid. When looking in more in detail into how individuals like Serge navigate (or are being navigated) between these various layers of governance of displacement, its challenges and gaps become more apparent. [Are there durable solutions for cases like his? Where can he and his family access which solutions? How are these solutions impacted by the \(absence of\) protection regimes and the work of humanitarian and development actors on these solutions? How, does Serge’s strategy link with these regimes or programmes?](#)

What solutions can Serge access within the broader region of the DRC?

Countries in the region, including Serge’s home country, have made great strides to better protect IDPs—a large part of whom is in situations of protracted displacement. The 2006 [Pact on Security, Stability and Development in the Great Lakes Region](#) includes two legally binding protocols on IDPs and returnees. In addition, the 2009 [African Union Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa](#) specifically addresses internal displacement on the continent. Nevertheless, despite the country’s engagement with these instruments and its high number of IDPs, dedicated national legislation and infrastructures have not yet been developed in the DRC.

As a result, Serge cannot rely on the protection of his country of origin, as it does not provide sufficient protection or access to basic human rights. Serge and his wife, like many people who have been displaced repeatedly in their lives in DRC, rely on their own strategies to protect their lives and find ways to sustain themselves, making use of mobility among other strategies. When Serge and his wife decided to move to Bukavu, they received assistance from translocal networks (in his case his uncle) that reach from his home village to Bukavu, the provincial capital of the South Kivu. They further diversify their income-generation activities: Serge changed his livelihood from farming to commercial activities.

What solutions are accessible outside the country of origin?

[What if the barbarism reached a level beyond indiscriminate violence, threatening the life of Serge and his family even more and affecting their networks and livelihood strategies, making their life in the DRC impossible? How would their situation differ if they had crossed a border to access protection? How would it affect their situation and access to solutions if they fell under the patronage of an international organisation? Would their coping strategies differ?](#)

Countries in East Africa and the Horn of Africa have been and still are major host countries of refugees, particularly following a series of conflicts and related massive displacements in the 1990s. The [Organisation of African Unity \(OAU\) Convention on the Specific Aspects of Refugee Problems in Africa](#) (OAU Convention) further developed the definition of a refugee in 1969 by expanding it to cases of generalised conflict and violence. At the same time, approaches in the region emphasise humanitarian assistance over long-term development and access to local integration.

Encampment, with restrictions on mobility and barriers to access to employment, and repatriations in situations where feasible, still dominate in most countries. In its 1998 Refugee's Act, Tanzania, for example, that hosts around 73,000 out of the 890,000 refugees from the DRC, does not provide for 'durable solutions'. Although the government granted citizenship to 162,000 former Burundian refugees in 2015, it generally implements a firm encampment policy for refugees. Ethiopia, in contrast, adopted its revised [National Refugee Proclamation No. 1110/2019](#) in January 2019, which was marked as one of the most progressive refugee policies in Africa. It entails comprehensive provisions on local integration, yet the related National Comprehensive Refugee Response Strategy, which will provide the framework for the implementation of the government's pledges for the implementation of the Comprehensive Refugee Response Framework, is still pending approval. *If Serge qualified as a refugee (outside the DRC) within the region, he and his wife would probably engage in some forms of mobility to support their lives, despite formal restrictions on mobility and barriers to access employment, while partially relying on limited aid provided by humanitarian actors, NGOs or the UNHCR. Serge would regularly travel to the closest city to engage in trading. Owing to the restrictions on formal mobility, he would need to resort to bribery and possibly later informally obtain a national ID card. With such a card, he could move around, access formal employment and a greater degree of security. His wife would engage in some incentive-based employment with UNHCR or local NGOs. They might also receive remittances from relatives living in bigger cities on the continent or further abroad.*

In the absence of solutions in the neighbourhood, what third-country solutions are there in Europe?

Under the dire prospects of longer-term solutions, how would Serge's situation change if he had moved to Europe, for example? What coping strategies, forms of mobility and networks of support could he rely on?

In the absence of solutions within the country or the wider region, Serge may opt to move to the European Union (EU) as an area of freedom and safety and a strong economic market with a variety of options. Nonetheless, reaching the EU and access to those options depends on his human, social and economic capital and the recognition of this capital (e.g. recognition of educational qualifications or his skills) by a country within the EU.

One such individualised solution would be the path of labour mobility, which requires formal documents that are hard to obtain and a solid network with employers or diaspora abroad. In 2018, only 252 workers from the DRC had a residence permit in the EU, the majority of those having chosen to stay in France (Eurostat; unless not otherwise stated, Eurostat data for 2018 is being used).

Another legal pathway relates to the availability of social networks and ties in EU countries. Such "social capital", however, only supports mobility based on a narrow definition of family, extending to spouses and unmarried partners "in a stable relationship" as well as (unmarried and "underage") children (Art. 4 [Family Reunification Directive 2003/86/EC](#)). The Directive also grants the right to family reunification to refugees (and does not exclude this right to beneficiaries of subsidiary protection). Still, recognised refugees may need to fulfil certain requirements (stable and regular income and/or housing), and beneficiaries of subsidiary protection may need to wait a certain period before they may sponsor the family reunification. *To seek family reunification for Serge would be thus only an option if his spouse had already been granted refugee status.* In 2018, France issued 1,790 first permits to family members of Congolese sponsors with refugee status residing in France whereas only to 30 sponsors with subsidiary protection status.

In the absence of existing networks the right qualifications and related documentation, the labour migration or family reunification pathway will be of no use for Serge. *Claiming international protection would thus be the only remaining option to enter the EU. Arguably, one of the most decisive weaknesses of the global refugee regime is that the 1951 Refugee Convention does not say how people seeking protection should access it.* The Convention should, according to its drafters, regulate the legal status of refugees who have already been accepted in a receiving state, whereas it should not touch upon the question of admitting refugees. In the EU, this gap has been translated into an adaption of the safe third-country principle enshrined in the [Dublin Regulation](#) that transfers the responsibility for an application to the first country where an applicant reached the EU, mainly an EU external border country such as Greece, Italy or Spain.

An exception to this rule is resettlement, entailing the transfer of refugees from an asylum country to another country that has agreed to admit them and ultimately grant them permanent settlement status, as one of three propagated "durable solutions". *Resettlement is usually restricted to vulnerable people.* In 2018, 1,100 Congolese were resettled to six different countries within the EU, the majority of them to Sweden (615 persons), the United Kingdom (280) and Finland (130). Serge, as a middle-aged man would hardly be recognised to be in special need of resettlement. Consequently, reaching Europe would most likely require a perilous journey outside formal governance channels via the Mediterranean to Italy (reportedly only 75 Congolese took this path in 2018) or via Greece (reportedly 1,470 Congolese opted for this route in 2018).

Which rights are there for refugees in Europe?

Overall, 7,525 individuals from the DRC applied for international protection in the EU in 2018. 1,470 Congolese applied in Greece, supposedly as the first country of entry into the EU. Nonetheless, *for many Congolese applicants, the language and existing networks seemed to determine the preferred country of destination*, with 4,365 applications having been submitted in France. In 2018, EU member states decided on 7,405 applications from citizens from the DRC. 2,100 of these were granted refugee protection (28%), 220 subsidiary protection (3%) and 4,980 applications were rejected (67%). Overall, Greece decided on 575 applications from citizens of the DRC and France on 5,220 applications. Both countries' recognition rates are similar to EU-wide trends.

During the asylum procedure, Serge would not be able to work nor to move freely between EU countries. EU law grants access to the labour market only after a waiting period of nine months ([Reception Conditions Directive](#) (recast), Art 15). Often, the movement of asylum seekers is also restricted within the country where they apply for international protection. In Greece, where arrivals from the DRC formed the third-largest group in 2019 ([UNHCR Operational Data Portal on the Mediterranean Situation](#)), as a first stage in the asylum procedure, vulnerable people are transferred to the mainland as well as fast-track Syrian cases. As an applicant from the DRC, Serge would need to remain in one of the reception and identification centres (RIC, 'hotspot') created on the Aegean Islands. The situation in those centres is precarious, as recently shown in a [report by the European Court of Audits](#), which particularly criticised the lack of reception capacity and the resulting dire situation in makeshift tents. At the end of October, the five RICs hosted 30,700 people, almost six times more than their maximum capacity of 5,400, as [reported by UNHCR](#).

If Serge were among the roughly 30 per cent of citizens of the DRC who receive refugee status in the EU, he could enjoy full access to the labour market, social welfare systems, education, etc.—essentially all rights of an EU citizen except political rights. Beneficiaries of subsidiary protection, however, have more limited access to rights. Above all, their residence status is reviewed periodically, and they are granted a temporary residence of at least one year. While refugee status provides a more long-term perspective, subsidiary protection only allows beneficiaries to carry on with their lives to a limited extent. Family reunification is often restricted within a certain waiting period. Access to jobs is often hampered due to the temporariness of the status. Yet, beneficiaries of refugee status do not enjoy the right to settle elsewhere within the EU either. Their status is not recognised throughout the EU but is linked to the issuing member state. To be allowed to move elsewhere in the EU, Serge would need to wait for five years (according to the [Long Term Residence Directive](#)). At the end of 2018, 63,489 Congolese had a long-term residence status in different EU countries, the majority of whom in France, Belgium and Sweden.

Conclusions

Solutions refer to both the capability of displaced persons to rebuild their lives after displacement and the opportunities available to do so. Solutions can be understood as paving the way towards being able to fully exercise the civil, political, economic, social and cultural rights that all human beings should enjoy.

Serge's case and his hypothetical pathways show that access to solutions is highly impacted by his social and economic capital and the governance framework for protection available to him. Serge is unlikely to be able to go along the highly selective legal and labour migration channel. Similarly, his chances of reaching a safe country depend on Serge's economic conditions, his networks and support. Without such means, the possible solutions are limited to the region close to the country from where he fled. At the same time, Serge is engaged in creating and finding solutions on his own, building on multiple local and translocal social networks and mobility—like many other displaced people all over the world (Etzold, Belloni, King, Kraler, & Pastore, 2019; Vollmer, 2019). These individual strategies are, however, not always supported by the governance regimes offering protection for displaced people.

To expand solutions for forcibly displaced people, it is key that governance regimes take those individual human, social and economic capitals more into account. They ultimately will allow forcibly displaced people such as Serge to more directly access basic human rights and thus durable and individual solutions.

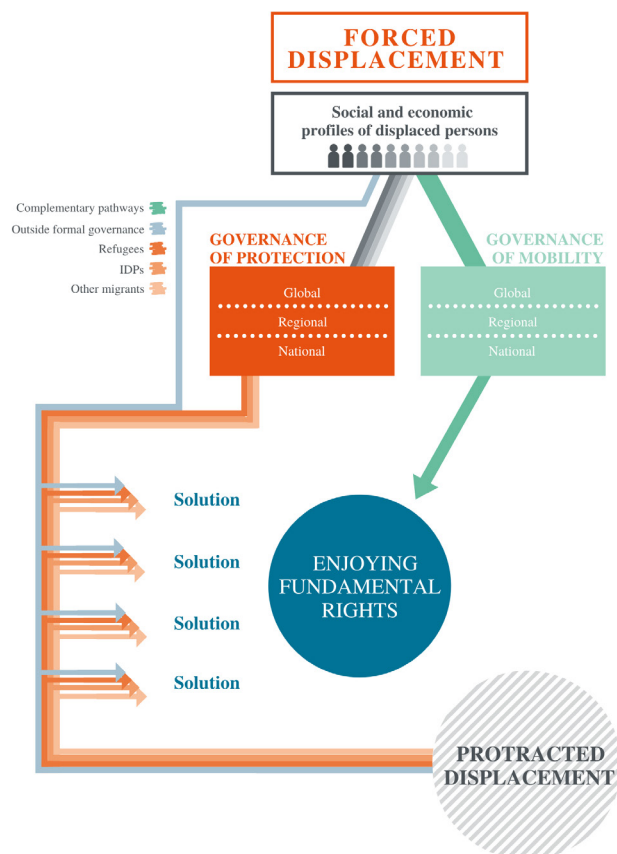


Figure 2: Governance of and solutions for forcibly displaced people
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This *policy brief* is based on the forthcoming TRAFIG *working paper no. 3* “Governing protracted displacement: An analysis across global, regional and domestic contexts” by Ferreira et al. It draws on comparative insights from eight different countries that host large groups of displaced people and which are the focus of the TRAFIG project: Greece, Germany and Italy in Europe; Ethiopia, the Democratic Republic of the Congo (DRC) and Tanzania in Africa; and Jordan and Pakistan in Asia.

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